



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF
GENERAL COUNSEL

July 12, 2017

**THIS LETTER CONTAINS INFORMATION CLAIMED AS CONFIDENTIAL BUSINESS
INFORMATION (CBI) AND SHOULD BE HANDLED IN ACCORDANCE WITH
APPROPRIATE CBI PROCEDURES**

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Justin Kim
Posco Daewoo America Corp.
222 S. Harbor Blvd., Suite 1020
Anaheim, CA 92805

RE: Final Confidentiality Determination Reference No. P-15-0487

Dear Mr. Kim:

Posco Daewoo America Corp. (Posco Daewoo or Company) has asserted a claim of confidentiality on the following chemical identity: **Multi-walled carbon nanotubes;** [REDACTED]. The confidential business information (CBI) claim is found at the following Posco Daewoo submission: Notice of Commencement of Manufacture or Import, dated April 12, 2017 (submission). This submission also included the Company's 15 U.S.C. § 2613(c) CBI certification statement, attesting the completeness and accuracy of the CBI claim. *Id.* at 2.

In accordance with the Toxic Substances Control Act (TSCA), I have carefully considered the Company's CBI claims for submitter identity. *See* 15 U.S.C. § 2613(g). For the reasons stated below, I approve the CBI claim. This information is therefore entitled to confidential treatment pursuant to Exemption 4 of the Freedom of Information Act (FOIA). 5 U.S.C. § 552(b) (4).

Discussion

Section 14(a) of TSCA, 15 U.S.C. § 2613(a), applies Exemption 4 of the FOIA as the basis for determining whether business information submitted under TSCA is entitled to confidential treatment. Exemption 4 of the FOIA protects from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (commonly referred to as "CBI"). 5 U.S.C. § 552(b) (4). Thus, to meet the requirements of Exemption 4, and to receive confidential

treatment, the Agency must find that the business information constitutes either (1) trade secrets or (2) CBI. *Id.*¹

The information claimed as CBI was collected pursuant to EPA's exercise of authority under Section 5 of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, 15 U.S.C. § 2604, and was, therefore, a required submission. As a result, the Company must demonstrate that disclosure of the information would be likely either to impair the EPA's ability to obtain necessary information in the future, or to cause substantial harm to the Company's competitive position. 40 C.F.R. § 2.208(e)(1); *see also Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871, 879 (D.C. Cir. 1992) (en banc), cert denied, 507 U.S. 984 (1993).

Confidentiality of the Information

Based on the Company's substantiation, EPA has determined that the information claimed as CBI meets the threshold requirements for confidential treatment. *See* 40 C.F.R. § 2.208. The substantiation sufficiently demonstrates that the Company has taken reasonable measures to protect the confidentiality of the information, both internally, and from its competitors. For example, Posco Daewoo asserts that it limits access to this information to individuals with a need-to-know, and requires those with access to the information to sign non-disclosure agreements. The substantiation also confirms that the chemical identity is not revealed in any public documents and that the chemical substance is located on the confidential portion of the TSCA inventory. *See* 40 C.F.R. § 711.30.

Likelihood of Substantial Competitive Harm

According to the Company's submission, the chemical identity claimed as CBI refers to multi-walled carbon nanotubes, which are manufactured by Posco Daewoo's parent company, [REDACTED]. Carbon nanotubes may be used in a wide range of applications, including electronics and machinery, and the market for this technology is competitive. In its substantiation, Posco Daewoo explained that it had expended considerable time and expense to manufacture this product, which represents a significant advancement in the Company's carbon nanotube technology. Disclosure of the chemical identity would undermine these investments, as it would reveal to competitors the partial reaction process necessary for the product's manufacture. Other companies could then produce similar carbon nanotubes without having to expend the same time and money in research and development.

The substantiation adequately shows that the chemical identity is highly sensitive to the Company's commercial operations and the release of the information would place it at a competitive disadvantage, thereby likely causing substantial harm to its competitive position. Therefore, after careful consideration of the Company's substantiation and the recommendation by the Office of Pollution Prevention and Toxics (OPPT) within the Office of Chemical Safety and Pollution Prevention (OCSPP), I approve the CBI claim for chemical identity.

¹ Because I find that the information qualifies as confidential business information, I will not address whether it is a trade secret at this time.

Conclusion

In sum, because the Company has explained the confidential nature of the business information and described specifically how disclosure of the information would likely cause substantial competitive harm, I am approving the CBI claim for chemical identity under Exemption 4 of the FOIA and section 14 of TSCA. In accordance with section 14(e) of TSCA, 15 U.S.C. § 2613(e), the information is entitled to confidential treatment for a period of 10 years from the date on which the Company asserted the claims, or until such claims are withdrawn.

Should you have any further questions concerning this matter, please call Melissa Shapiro at 202-564-2890.

Sincerely,

KEVIN
MILLER

Digitally signed by KEVIN MILLER
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Kevin Miller
Assistant General Counsel
General Law Office

Cc: Skyler Dobert, Office of Pollution Prevention and Toxics